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injuries and for death of a human being have occupied so largely in excess of others the attention of the courts, the authors have given to them the space and prominence which their proper consideration necessitates."

It would seem, too, that the general principles of the law of damages have not been discussed with as much fullness as is desirable before entering on particular applications, and that some questions not strictly within the law of damages are included, as for example in Title II. The important subject of consequential damages in its general aspects and apart from particular applications, is not treated at great length, nor is the subject of damages for breach of contract fully developed. It is a matter of regret that the authors have not availed themselves of the opportunity, open to them by the failure of the older treatises, to give us help on the question of damages for "anticipatory breach."

Considerable attention has been paid to the matter of damages for mental suffering, but here again the discussion is scattered among the various classes of cases in which the question may arise.

On the matter of damages for personal injuries or for death, this work should make a place for itself, and be of incalculable assistance to the triers of tort cases. For example, in the note on pages 240-262 inclusive, a collection is made of cases in which the question raised was whether or not the verdicts rendered were excessive. The authors have classified the cases under the heads of particular injuries, and have given for each case a concise but sufficient statement of facts to allow the practitioner to see at a glance the bearing and effect of the case.

Roughly, 20,000 cases have been cited in the work. This is a smaller number than are cited in Sutherland, but somewhat larger than in Sedgwick. The citations are well arranged, alphabetically by states and chronologically within each jurisdiction, the latest decision being put first. Citations are made to all unofficial reports and collections, as well as to official reports. In the front of each volume is a table of contents of that volume, and a list of the cases cited in the volume. In that respect the arrangement is similar to that of the other large treatises on damages. At the end of the third volume is an index digest of the whole work.

**THE PUBLICATIONS OF THE SELDEN SOCIETY. Volume XVIII. For the year 1904. Borough Customs. Volume I. Edited by Mary Bateson. London: Bernard Quaritch. 1904. pp. lix, 356. 4to.**

This is the first attempt to bring together the borough customs of England or to set them forth so that they may be compared and studied. The Selden Society deserves commendation for having undertaken to recover the customary law from the municipal archives and for having selected an editor so well fitted to do the work. It is probably safe to say that no collection of materials of more importance for the study of the borough institutions of England has ever been published; it is a substantial contribution to our knowledge of municipal as well as legal history.

The general scope of the work is explained in the introduction as follows: "The present volume is confined to the jurisdiction of the borough court and its procedure. A few further points of procedure and rules of merchant law will be treated in the next volume, but the main themes of the second volume will be the rules of family law and rules which define the relation between the seignorial and ecclesiastical powers on the one hand and the burgesses on the other. The laws of borough elections and what may be called the constitutional laws of the boroughs, and the laws and customs of trades, are excluded from our scheme, partly from exigencies of space, partly because the comparative method seems to be less suited to their case." The exclusion of the constitutional laws is to be regretted. What we need is a corpus of borough law, including all its main branches; it would be a great boon to scholars if the Selden Society would extend the scope of this collection of texts and give us three or four volumes of borough customs instead of two.

It is difficult to set forth or analyze the contents of the volume before us, for

many topics are dealt with, and there was much diversity in the customary law of the various towns. The reader will be struck by the survival of many archaic usages and old legal principles in the boroughs, such as the blood-feud, extra-judicial distress, compurgation, various barbarous forms of punishment such as drowning, burial alive and burning, and the requirement that the prosecutor or appellant should act as executioner. Writers are often inclined to exaggerate the progressive spirit of the medieval municipalities, but in some respects municipal custom was much more conservative than the common law. This volume is particularly rich in new material relating to the older modes of proof and to the attitude of the burgesses toward judicial combat and trial by jury. In the interesting section concerning the assize of fresh force the editor surmises that the forty weeks named in the London Liber Albus as the limit of time within which this action may be brought is a mistake for forty days; but the period of forty weeks is again mentioned in Letter Book C (ed. Sharpe, p. 146), and the same period seems to have been recognized by the customs of Oxford (Jenks, Reports 21), which were modelled after those of London. The only extract relating to the writ *ex gravi querela* is taken from a customal of Lincoln (1480); references to passages of much earlier date will be found in 18 HARV. L. REV. 130.

It is difficult, however, to discover omissions or flaws in Miss Bateson's work; she is a thoroughly competent editor; her industry, learning, and remarkable knowledge of the sources of municipal history deserve the highest praise. We look forward with interest to the publication of the second volume, in the introduction of which she proposes to inquire into the significance of the texts which she is editing.

C. G.

STUDIES IN BIBLICAL LAW. By Harold M. Wiener. London: David Nutt. 1904. pp. xi, 128. 8vo.

So slight has been the direct influence of the code of the Pentateuch upon the development of our law, despite the intensely Puritan movement that swept over the English race in the seventeenth century, that Mr. Wiener's book, though written from a lawyer's point of view, is of more interest to the layman than to the law student. It is an "attempt to apply the ordinary methods of legal study to the solution of Biblical problems," and, despite the taint of the professional fallacy that only lawyers can reason, is both novel and interesting.

The first part of this little volume is devoted to a vigorous, if not potent, criticism of the higher criticism of the Bible, in which Ewald, Renan, and Driver are "refuted" to the author's satisfaction. The method employed is an ingenious and skillful application of the principles of legal interpretation to texts in apparent conflict, and the results are at least more plausible than those usually obtained by such as seek to reconcile scientific theorizing and Biblical exegesis.

Of greater interest is Mr. Wiener's theory that the covenant at Sinai is a religious treaty, drawn up with all the technical formalities of early Hebrew contracts. When Jacob and Laban enter into a pillar-covenant at Galeed, the attending formalities are a pillar, and a heap of stones as "witnesses," an oath, sacrifices, and feasts. Similarly, at Sinai, we find a bilateral agreement made with all the "covenant" formalities, — altar, and pillars as witnesses, oath, sacrifice, and feasts, — and the entire process is paralleled at the Deuteronomic repetition. The writing and stone tablets are not the vehicles for expressing the contract, but are additional "witnesses," which accords well with what is known of the primitive law of evidence, among the Franks and the Lombards.

In the chapter on the "Spirit of Legislation," the author labors to relieve the Biblical criminal code from the reproach of inhumanity frequently cast upon the *lex talionis*, by proving an implied system of fines as a permissive alternative to the literal rigor of the law. But he ignores both the Semitic ideas of justice in the tribal stage of development while still dominated by the early law of blood revenge, and the administration of justice amidst roving and warlike tribes whose laws for personal security are, of necessity, brutally strict. Compensation by payment of a fine, instead of the mutilation of the offender's person, which is found in the earliest stages of Teutonic law, is a late development